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SUBJECT: THAILAND: CABINET SECRETARY-GENERAL DISCUSSES RECENT EMERGENCY ORDINANCE WITH AMBASSADOR

REF: (A) BANGKOK 4901 (B) BANGKOK 4864 (C) BANGKOK 4697 (D) BANGKOK 4653 (E) BANGKOK 4596

Classified By: AMBASSADOR RALPH L. BOYCE. REASON: 1.4 (D)

¶1. (C) Summary: During tea with the Ambassador on July 28, RTG Cabinet Secretary-General Dr. Borwornsak Uwanno took issue with critics of the recently enacted emergency decree, saying that it contained legal safeguards and will be applied sparingly and only when absolutely necessary. Dr. Borwornsak said that the constitution was alive and well under Thaksin and that characterization of him in some quarters as being a constitutional or parliamentary dictator were untrue and unfair. He acknowledged that Thaksin has lost significant political support since his massive election victory in February, but added that the Prime Minister would still win three-fifths of the Assembly's seats if an election were held today. End Summary.

EMERGENCY ORDINANCE CONCENTRATES EMERGENCY POWER IN PM'S OFFICE

¶2. (C) The Ambassador invited RTG Cabinet Secretary-General Dr. Borwornsak Uwanno for tea on July 28 to discuss recent political events, especially the issuance of an emergency decree by the cabinet last month in the wake of more violence in Thailand's south. Borwornsak noted that the decree is now, with palace approval, a "Royal Ordinance." Though he is widely believed to be a co-drafter of the original decree, Borwornsak denied this, crediting Deputy Prime Minister Wisanu Kruangam as the primary author. (Note: Borwornsak a few minutes later told the Ambassador that both he and Wisanu had spent hours correcting and polishing the draft decree before its release. End note.) Borwornsak said that the ordinance could be used to cover a variety of emergencies involving national security, economic emergency or national disasters, such as last year's tsunami. In effect, the ordinance concentrates a number of emergency powers, previously dispersed around various ministries, in the office of the Prime Minister, he explained.

ASSURES THAT EMERGENCY ORDINANCE SUBJECT TO CONSTITUTIONAL SCRUTINY

¶3. (SBU) Borwornsak pointed out that the ordinance is subject to Section 219 of the Constitution, which states that prior to approval of the emergency decree by Parliament, one-fifth of the House or the Senate can petition the respective body presidents to claim that the original reason for the decree was not a valid "emergency" and thus must be referred to the Constitutional Court. Even after Parliament approved the decree, it could still be referred through the Ombudsman to the Constitutional Court for examination of its provisions, Bowornsak said.

¶4. (C) Borwornsak said that civilians who believe they have been mistreated under the ordinance can claim civil damages if it can be proven that authorities did not act in good faith, discriminated against the individual or acted disproportionately to a perceived threat. Though it is up to the detainee to provide proof that government personnel abused the ordinance, the determination of whether the government acted in "good faith" is rendered through an "inquisitorial" court process, he added.

POLLS SHOW PUBLIC SUPPORT FOR EMERGENCY ORDINANCE

¶5. (C) The Ambassador raised the continuing accusations -- by the political opposition, the media, and human rights groups -- that the ordinance gave the Prime Minister the potential to seriously undermine civil rights in Thailand. Borwornsak replied that he was not surprised over criticism of the ordinance by the PM's detractors. However, he emphasized, the articles of the ordinance have not been used to date. He also pointed out that polls report that over 80 percent of the Thai people, including those in the affected southern provinces (Narathiwat, Yala and Pattani), support the new ordinance. In an aside, Borwornsak opined that with the intense amount of international and domestic scrutiny of the measure, local authorities may well hesitate to use the powers authorized by the ordinance. He added that he had sent a copy of the draft to National Reconciliation Commission (NRC) Head and former Prime Minister Anand Panyarachun an hour before the Cabinet saw it. Shortly afterwards Anand telephoned Thaksin to discuss the decree and

suggest easing some of the measures related to detention and censorship. Borwornsak claimed that some members of the NRC have their own agendas; he cited the call by a few members for the RTG to pressure Cambodian authorities to release several Thai Muslims being held on suspicion of having terrorist links.

REJECTS ACCUSATIONS THAT THAKSIN IS "PARLIAMENTARY DICTATOR"

16. (C) Borwornsak dismissed accusations that Thaksin's huge (377 of 500 seats) majority in parliament gave him virtual dictatorial powers. Rather, Borwornsak said, the 1997 Constitution (which he helped to draft) provides for an apolitical Senate with the power to impeach, eight independent watchdog bodies including the Ombudsman, the Constitutional Court and the National Counter Corruption Commission (NCCC), and the right of the opposition to open debate in the Parliament. The press is free and the public has the right to assemble, he added. He admitted that there have been some, such as the resignation of the entire NCCC for financial irregularities. If there is a failure of the Constitution, it is a failure of society, Borwornsak stressed. "You can't legislate individuals." As for the Prime Minister's current popularity, Borwornsak admitted that it had slipped in the six months since his crushing victory. He said that Thaksin himself told him that if the election were held today, he would only gather 300 seats rather than the 377 seats he won in February.

17. (C) Comment: Borwornsak met with the Ambassador several hours before the televised discussion of the ordinance between Thaksin and Anand (ref. A). Borwornsak put forward a "let's wait and see" position, suggesting that critics will find that the new emergency ordinance will neither be as draconian nor applied as lavishly as they fear. He admitted that the ordinance still gives the Prime Minister wide latitude to apply the measures nationwide, but hinted that sensitivities abroad and at home may hold back full implementation of the ordinance. That said, if another significant security incident occurs, such as the multiple attacks in Yala last month, the government may not hesitate to act in accordance with the ordinance's measures -- knowing full well that such actions will invite criticism from some quarters. End Comment.

BOYCE